

Court File No. T-146-04

**FEDERAL COURT**

**BETWEEN:**

**OIL LIFT TECHNOLOGY INC.**

**Plaintiff**

**- and -**

**TORQUE CONTROL SYSTEMS LTD.**

**Defendant**

**STATEMENT OF CLAIM**

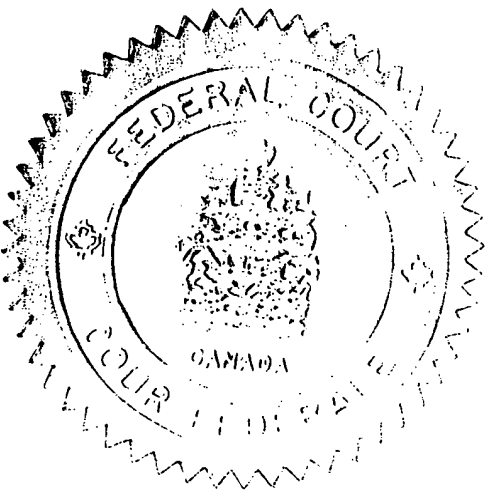
**TO THE DEFENDANT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.**

**IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Court Rules, 1998, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.**

**If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.**


**Copies of the Federal Court Rules, 1998, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.**



**IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.**

January 20, 2004

Issued by:

  
(Registry Officer)

**DENISE SYRETTE**  
**Registry Officer**  
**Agent du Greffe**

Address of local office:  
90 Elgin Street,  
Ottawa, Ontario, K1A 0H9

TO: Torque Control Systems Ltd.  
4636 Eleniak Road  
Edmonton, Alberta  
T6B 2S1

## CLAIM

1. The plaintiff claims:

- (a) a declaration that, as between the parties all claims of Canadian Letters Patent No. 2,349,988 are valid and subsisting and that these claims have been infringed by the defendant;
- (b) a permanent and interlocutory injunction restraining the defendant, by itself, its officers, servants, agents, workmen, employees, or otherwise, from further infringing, or assisting others in infringing the claims of Canadian Letters Patent No. 2,349,988;
- (c) an Order directing that the defendant forthwith, under oath, deliver up to the plaintiff or destroy, all materials, devices or apparatus in the possession or control of the defendant which in any way offend against any Order as may be made pursuant to the plaintiff's claims herein;
- (d) damages, or in the alternative as the plaintiff may elect after discovery, an accounting of profits, in respect of the infringing activity set out herein;
- (e) the plaintiff's costs of this action on a solicitor and client basis;
- (f) pre- and post-judgment interest; and
- (g) such further and other relief to which the plaintiff may be entitled and which to this Honourable Court may seem just.

2. The plaintiff, OIL LIFT TECHNOLOGY INC. (hereinafter "Oil Lift"), is a corporation incorporated under the laws of the province of Alberta, having its principal office and place of business at 102, 3750-19 Street NE, Calgary, Alberta, T2E 6V2.

✓ 3. The defendant, TORQUE CONTROL SYSTEMS LTD. (hereinafter "TCS"), is a corporation incorporated under the laws of the province of Alberta, having its principal office and place of business at 4636 Eleniak Road, Edmonton, Alberta, T6B 2S1.

4. On May 7, 2002, Canadian Letters Patent No. 2,349,988 (hereinafter the "Patent") was granted to Oil Lift for an invention of Vern Arthur Hult entitled "Polish Rod Locking Clamp".

5. The Patent grants to Oil Lift, the exclusive right, privilege and liberty of making, constructing, using and vending to others to be used, the invention as claimed in the Patent.

6. The invention claimed in the Patent relates to a polished rod lock out clamp. Generally, and as defined in claim 1 of the Patent, this lock out clamp is operable to suspend a polished rod in an oil well installation, and comprises a clamp body having a bore for receiving the polished rod therethrough in spaced relation to said bore, clamp members in said clamp body for gripping the polished rod in said bore, and manipulating means secured to said clamp body and said clamp members for moving said clamp members between a polished rod gripping position in which said clamp members grippingly engage said polished rod in metal to metal contact therebetween to prevent rotation or axial movement of the polished rod, and a retracted position in which said clamp members are removed from the polished rod to permit rotational and axial movement of the polished rod in said bore of said clamp body. Other features of the invention that is the subject of the exclusive right conferred by the Patent are defined in the other claims of the Patent.

7. TCS has made, constructed or had constructed for it, imported, offered for sale, sold and/or distributed in Canada, rod clamping blow out

preventers which are operable to suspend a polished rod in an oil well installation, and which comprise a clamp body having a bore for receiving the polished rod therethrough in spaced relation to said bore, clamp members in said clamp body for gripping the polished rod in said bore, and manipulating means secured to said clamp body and said clamp members for moving said clamp members between a polished rod gripping position in which said clamp members grippingly engage said polished rod in metal to metal contact therebetween to prevent rotation or axial movement of the polished rod, and a retracted position in which said clamp members are removed from the polished rod to permit rotational and axial movement of the polished rod in said bore of said clamp body. These clamping blow out preventers also exhibit all of the features defined in claims 2 through 37 of the Patent.

8. TCS' clamping blow out preventers described in paragraph 7 above therefore include each and every element of all claims of the Patent, and by virtue of the aforesaid acts, TCS has infringed these claims. These acts of TCS have been without the consent, licence or authority of Oil Lift.

9. On November 28, 2003, Oil Lift forwarded to TCS a letter bringing to TCS' attention the Patent, and TCS' infringing activities. TCS has persisted in its infringing activities.

10. By reason of the aforesaid acts of TCS, Oil Lift has suffered damage and will continue to suffer damage and TCS has made a profit and will continue to make a profit unless it is enjoined by this Honourable Court.

11. Oil Lift is not aware of the precise nature of all the infringing activities of TCS, but Oil Lift seeks full compensation in respect of all of them.

DATED at Ottawa, Canada, this 20<sup>th</sup> day of January, 2004


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Solicitors for the Plaintiff

FEDERAL COURT - TRIAL DIVISION

BETWEEN:

Copy of Document

Copie du document

Filed / Déposé

Received / Reçu

OIL LIFT TECHNOLOGY INC.

Plaintiff

(Defendant by Counterclaim)

Date **MAR 16 2004**  
- and -

CAS-SATI  
Marie Griffith  
Registry Officer  
Agent du greffe

TORQUE CONTROL SYSTEMS LTD.

Defendant

(Plaintiff by Counterclaim)

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. This defence is filed on behalf of the Defendant, Torque Control Systems Ltd. (hereinafter "Torque Control"), in response to the Statement of Claim issued by Oil Lift Technology Inc. (hereinafter "Oil Lift") on January 20, 2004.
2. Except as expressly admitted herein, each and every allegation made in the Statement of Claim is specifically denied and the Defendant puts the Plaintiff to the strict proof thereof.
3. The Defendant admits the allegations made in Paragraph 3 of the Statement of Claim.

4. The Defendant specifically denies the allegations made in Paragraphs 1, 5, 6, 7, 8, 9, 10 and 11 of the Statement of Claim.
5. The Defendant has no knowledge of the allegations made in Paragraph 2 of the Statement of Claim.
6. With respect to Paragraphs 4, 5, and 6 of the Statement of Claim, the Defendant admits that Canadian patent 2,349,988 (hereinafter the “‘988 patent”) is entitled “Polish Rod Locking Clamp”, that according to the face of the document the application leading to the ‘988 patent was filed on June 11, 2001, that according to the face of the document the application was laid open for public inspection on October 10, 2001, that according to the face of the document the ‘988 patent issued on May 7, 2002, that according to the face of the document the inventor is Vern Arthur Hult, and that according to the face of the document the owner of the patent is Oil Lift Technology Inc. The Defendant has no actual knowledge of the inventorship or ownership of the ‘988 patent, nor the entitlement of Oil Lift to claim any right in any alleged invention or under the ‘988 patent.
7. The Defendant specifically denies that Oil Lift has any exclusive right, privilege, liberty of making, constructing, using or vending to others to be used, polished rod locking clamps as described and claimed in the ‘988 patent and puts the Plaintiff to the strict proof thereof. The Defendant further denies the validity of any of the claims of the ‘988 patent and that the patent provides any rights to the Plaintiff.

8. With respect to Paragraphs 7 and 8 of the Statement of Claim, the Defendant admits that it has manufactured, distributed and sold blowout preventors in Canada, but denies that any such devices infringe any claims of the '988 patent and puts the Plaintiff to the strict proof thereof. In particular, but without limiting the foregoing, the Defendant denies manufacturing, distributing or selling blow out preventors which are operable to suspend a polished rod in an oil well installation, and which comprise a clamp body having a bore for receiving the polished rod therethrough in spaced relation to the bore, clamp members in the clamp body for gripping the polished rod in the bore, and manipulating means secured to the clamp body and the clamp members for moving the clamp members between a polished rod gripping position in which the clamp members grippingly engage the polished rod in metal-to-metal contact to prevent rotational or axial movement of the polished rod, and a retracted position in which the clamp members are removed from the polished rod to permit rotational and axial movement of the polished rod in the bore of the clamp body.
9. With respect to Paragraph 9 of the Statement of Claim, Torque Control admits receiving a letter, dated November 28, 2003, from Oil Lift's solicitors alleging infringement of the '988 patent. Torque Control specifically denies engaging in any infringing activity and again puts the Plaintiff to the strict proof thereof.

10. As for Paragraphs 10 and 11 of the Statement of Claim, the Defendant denies that any of its activities have caused the Plaintiff to suffer damage, or that they will or are likely to cause the Plaintiff to suffer damage in the future, and denies that it has made any profits, or will continue to make any profits, through any infringing activities. Furthermore, the Defendant denies that the Plaintiff is entitled to any of the compensation or remedies claimed or sought in the Statement of Claim, including damages, costs and/or interest. The Defendant also denies that the Plaintiff is entitled to any equitable remedies, and in particular injunctive relief, the delivery up or destruction of any allegedly infringing devices or an accounting of profits. The Defendant puts the Plaintiff to the strict proof of all claimed remedies.
11. Torque Control further pleads that each and every claim of the '988 patent is, and has always been, invalid, void and of no force or effect in that:
- (i) prior to the claim date for the claims of the '988 patent, and having regard to the patents, publications and products identified in Schedule "A" attached hereto, the subject matter of the claims of the '988 patent was disclosed in such a manner that it became available to the public, contrary to Section 28.2(1)(b) of the Patent Act;
  - (ii) the subject matter of the claims of the '988 patent was, and would have been, at all material times obvious to persons having reasonable skill in the art having regard to information publicly disclosed prior to the claim date for the claims of the '988 patent contrary to Section 28.3 of the Patent Act, such public information including at least those patents, publications and products identified in Schedule "A" attached hereto; and,

(iii) more than one year before the filing date of the '988 patent the subject matter defined by the claims of that patent was disclosed in such a manner that the subject matter became available to the public in Canada or elsewhere contrary to Section 28.2(1)(a) of the Patent Act, and in particular, more than one year before the filing date of the '988 patent the Plaintiff manufactured, offered for sale and sold a polished rod lockout clamp having a clamp body with a bore for receiving the polished rod therethrough, clamp members situated within the clamp body for gripping the polished rod, and manipulating means secured to the clamp body and to the clamp members for moving the clamp members between a polished rod gripping position where they grippingly engage the polished rod in metal-to-metal contact, and a retracted position in which the clamp members are removed from contact with the polished rod.

12. The Defendant therefore requests that this action be dismissed with costs, including expert fees and applicable goods and services and other taxes, payable on a solicitor and client basis or, in the alternative, costs to be taxed at the high end of Column V of Tariff B of the Federal Court Rules, 1998.

## COUNTERCLAIM

13. Torque Control (the Plaintiff by Counterclaim) claims:

- (i) a Declaration that Canadian patent 2,349,988, and each and every claim of that patent, is and has always been invalid, void and of no force or effect;
- (ii) in the alternative, in the event that one or more of the claims of the '988 patent is determined to be valid and enforceable, Torque Control claims a Declaration that none of its activities constitute an infringement of any exclusive rights under any such claims;
- (iii) a Declaration that Oil Lift, through its officers, directors, representatives and agents has made false or misleading statements tending to discredit the business, wares, or services of Torque Control contrary to Section 7(a) of the Trade-marks Act;
- (iv) a permanent and interlocutory injunction restraining Oil Lift, its officers, directors, representatives, agents, employees and assigns from making any further or additional false or misleading statements tending to discredit the business, wares or services of Torque Control;
- (v) damages, or in the alternative an accounting of the profits of Oil Lift as Torque Control may elect after full and complete discovery on the issue of profits, with respect to such false or misleading statements;

- (vi) punitive, exemplary and aggravated damages in the amount of \$5,000,000.00, or such further amount as this Court may deem just, on account of the actions of Oil Lift with respect to the false or misleading statements that have been made by Oil Lift tending to discredit the business, wares or services of Torque Control;
- (vii) its costs of this Counterclaim, including expert fees and any applicable goods and services and other taxes, payable on a solicitor and client basis or, in the alternative, costs to be taxed at the high end of Column V of Tariff B of the Federal Court Rules, 1998;
- (viii) pre and post judgment interest; and,
- (ix) such further and other relief as to this Honourable Court may seem just.

14. Torque Control repeats and relies upon the allegations made in the Statement of Defence.

15. With respect to the allegations made pursuant to Section 7(a) of the Trade-marks Act, prior to the commencement of this action but upon specific dates unknown to Torque Control, Oil Lift, through its officers, directors, representatives and agents, met with customers of Torque Control and advised such customers that Torque Control was infringing Oil Lift's patented clamping blow out preventor, causing customers of Torque Control to cancel expressed plans to purchase blow out preventors from Torque Control.

16. By reason of the false and misleading statements made by Oil Lift to the customers of Torque Control, Torque Control has suffered lost sales in excess of \$2,000,000.00, will continue to suffer further damage and a loss of sales, and has had its business, wares and services discredited in the marketplace. On account of the aforesaid activities of Oil Lift, Oil Lift has made a profit and will continue to make a profit unless restrained by this Honourable Court.

Dated at Toronto, Ontario this 15<sup>th</sup> day of March, 2004.



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Solicitors for the Defendant, Torque Control Systems Ltd.  
(Plaintiff by Counterclaim)

TO: The Administrator,  
The Federal Court of Canada

AND TO:

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A. David Morrow  
Kohji Suzuki

Solicitors for the Plaintiff, Oil Lift Technology Inc.  
(Defendant by Counterclaim)

## **SCHEDULE 'A'**

1. United States patent 1,578,696
2. United States patent 1,590,160
3. United States patent 1,664,709
4. United States patent 1,855,347
5. United States patent 2,173,355
6. United States patent 2,463,755
7. United States patent 2,660,248
8. United States patent 2,919,111
9. United States patent 3,475,798
10. United States patent 3,736,982
11. United States patent 4,825,948
12. United States patent 4,860,826
13. United States patent 5,327,961
14. United States patent 5,743,332
15. United States patent 5,746,249
16. United States patent 5,765,813
17. United States patent 5,875,841
18. United States patent 6,223,819
19. United States patent 6,595,278
20. Canadian patent 2,216,456

21. Canadian patent 2,280,581
22. Product specification sheet for Industrial Export Import Blowout Preventor Equipment
23. Excerpt from 1957 Composite Catalogue of Oil Field Equipment and Services for Rector Well Equipment Co., Inc. Type "CRS" Rectorhead Round Ram Tubing Head
24. Bundle of excerpts from 1982 - 1983 Composite Catalogue Of Oil Field Equipment and Services
25. Print out from Internet website of Double-E, Inc. ([www.doubleeinc.com](http://www.doubleeinc.com))
26. Copy of Double-E, Inc. Brochure; circa 1997
27. Copy of excerpts from Bowen Tools, Inc. General Catalog, 1978 - 1979
28. Two drawings of Double-E, Inc BOP, dated 1994